IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3169 of 2007()

C.C.NO.520/06 OF J.F.C.M, ADIMALY

PETITIONER: ACCUSED

SABU C.K., AGED 41 YEARS, S/O.KRISHNAN,
CHALIL VEEDU, MULLARINGADU P.O.,
VANNAPPURAM VILLAGE, THODUPUZHA,
IDUKKI DISTRICT.

BY ADV. SRI.RENJITH B.MARAR

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. VARGHESE, AGED 46 YEARS,
SANKARATHIL VEEDU,
ADIMALY KARA, ADIMALY P.O.,
MANAGING PARTNER, ADIMALY AUTO CREDIT,
ADIMALY.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3169 of 2007

Dated this the 18th day of October, 2007

O R D E R

Petitioner is the sole accused in a prosecution under Section 420 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police after due investigation. The petitioner has already entered appearance before the learned Magistrate and has been enlarged on bail. The petitioner has come to this Court now with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against him.

2. What is the reason ? The short reason urged by the learned counsel for the petitioner is that the charge levelled against the petitioner is groundless. The allegations even if accepted would not amount to offences under Section 420 I.P.C. In these circumstances, the jurisdiction under Section 482 Cr.P.C may be invoked and premature termination of the proceedings may be brought about, prays the learned counsel for the petitioner.

3. The Code of Criminal Procedure does provide for premature termination of criminal proceedings. Under the Code, in a case instituted upon a police report, such premature termination can be claimed under Section 239/240 Cr.P.C. In proceedings on a private

complaint/warrant procedure, premature termination of proceedings can be claimed under Section 245(1) and 245(2) Cr.P.C. In proceedings in a summons case instituted upon a police complaint, premature stoppage of proceedings can be claimed under Section 258 Cr.P.C. Law does take care in the provisions of the Code itself to enable parties who face unjust and unnecessary indictment to claim premature termination of proceedings. Ordinarily and normally, an indictee has to resort to the provisions of the Code to claim such premature termination of proceedings. In every case, where premature termination by discharge is a possibility, this Court cannot and shall not entertain applications under Section 482 Cr.P.C to invoke the extraordinary inherent jurisdiction of this Court. It is by now trite that such jurisdiction is to be invoked only sparingly and in an exceptional case for compelling reasons and that too in aid of justice. Where premature termination by discharge is a possibility, that by itself cannot persuade this Court to invoke the jurisdiction under Section 482 Cr.P.C. It is for the petitioner, who has already appeared before the learned Magistrate and has been enlarged on bail, to claim such discharge before the learned Magistrate.

4. The learned counsel for the petitioner submits that the petitioner is a postal official and if unnecessary insistence were made

on personal appearance of the petitioner on all dates of posting, it shall result in great loss, prejudice and inconvenience to the petitioner. I find no reason why such insistence on personal appearance ought to be made. The petitioner can certainly request that he may be permitted to be represented by counsel until a decision is taken on the question of charge/discharge under Section 239/240 Cr.P.C. Until then the learned Magistrate need not insist on the personal appearance of the petitioner.

5. With the above observations, this Crl.M.C is dismissed.

(R.BASANT, JUDGE)

rtr/-